

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-0531-EAQ-E **TCEQ ID:** RN105186456 **CASE NO.:** 33118
RESPONDENT NAME: Fairway Leasing, L.L.C.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: 18534 Forty Six Parkway East, Bulverde, Comal County</p> <p>TYPE OF OPERATION: Construction site for commercial buildings</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 27, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney/SEP Coordinator: None</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468</p> <p style="margin-left: 20px;">Respondent: Ms. Kay Prince, Treasurer, Fairway Leasing, L.L.C., 103 Hummingbird Hill, Boerne, Texas 78006 Mr. Ernest Price, Manager, Fairway Leasing, L.L.C., 103 Hummingbird Hill, Boerne, Texas 78006</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 20, 2007</p> <p>Date of NOE Relating to this Case: March 29, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. One violation was documented.</p> <p>WATER</p> <p>Failure to re-apply and receive approval for a Contributing Zone Plan ("CZP") prior to initiating construction as a new property owner [30 TEX. ADMIN. CODE § 213.23(h)].</p>	<p>Total Assessed: \$1,000</p> <p>Total Deferred: \$200. <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$800</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete CZP including the associated application fee for the Site;</p> <p>b. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

TCEQ
DATES

Assigned 2-Apr-2007
PCW 3-Apr-2007

Screening 3-Apr-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Fairway Leasing, L.L.C.
Reg. Ent. Ref. No. RN105186456
Facility/Site Region 13-San Antonio

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 33118
Docket No. 2007-0531-EAQ-E
Media Program(s) Edwards Aquifer
Multi-Media
Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 1
Order Type 1660
Enf. Coordinator J. Craig Fleming
EC's Team Enforcement Team 4

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No enhancement due to average classification.

Culpability No 0% Enhancement

Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction

Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer
Extraordinary
Ordinary
N/A X (mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$185
Approx. Cost of Compliance \$5,000
0% Enhancement*
*Capped at the Total EB \$ Amount

Subtotal 6 \$0

SUM OF SUBTOTALS 1-7

Final Subtotal \$1,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment \$0

Notes

Final Penalty Amount \$1,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$1,000

DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

20% Reduction

Adjustment -\$200

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$800

Screening Date 3-Apr-2007

Docket No. 2007-0531-EAQ-E

PCW

Respondent Fairway Leasing, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 33118

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN105186456

Media [Statute] Edwards Aquifer

Enf. Coordinator J. Craig Fleming

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No enhancement due to average classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 3-Apr-2007

Docket No. 2007-0531-EAQ-E

PCW

Respondent Fairway Leasing, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 33118

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN105186456

Media [Statute] Edwards Aquifer

Enf. Coordinator J. Craig Fleming

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 213.23(h)

Violation Description

Failed to re-apply and receive approval for a Contributing Zone Plan ("CZP") prior to initiating construction as a new property owner, as documented during an investigation conducted on March 20, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

15 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One monthly event is recommended based on the investigation date of March 20, 2007 to the screening date of April 3, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$185

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent Fairway Leasing, L.L.C.

Case ID No. 33118

Reg. Ent. Reference No. RN105186456

Media Edwards Aquifer

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$5,000	20-Mar-2007	15-Dec-2007	0.7	\$185	n/a	\$185

Notes for DELAYED costs

The estimated cost reflects the amount to prepare and submit a new Contributing Zone Plan ("CZP"). The date required is the date of the investigation. The final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

WP

Approx. Cost of Compliance

\$5,000

TOTAL

\$185

Compliance History

Customer/Respondent/Owner-Operator:	CN603165903	FAIRWAY LEASING, L.L.C.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105186456	18534 FORTY SIX PKWY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	EDWARDS AQUIFER	REGISTRATION	13-07021303	
Location:	18534 Forty Six Parkway East, Bulverde, Comal County.		Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	April 03, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 03, 2002 to April 03, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	J. Craig Fleming	Phone:	(512) 239-5806	

Site Compliance History Components

- | | |
|--|--------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | Fairway Leasing, LLC |
| 4. If Yes, who was/were the prior owner(s)? | Southland/RCR Management, Inc. |
| 5. When did the change(s) in ownership occur? | 1-Jun-04 |

Components (Multimedia) for the Site :

- | | |
|----|---|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |
| | N/A |
| B. | Any criminal convictions of the state of Texas and the federal government. |
| | N/A |
| C. | Chronic excessive emissions events. |
| | N/A |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) |
| | 554992 (03/20/2007) |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) |
| F. | Environmental audits. |
| | N/A |
| G. | Type of environmental management systems (EMSs). |
| | N/A |
| H. | Voluntary on-site compliance assessment dates. |
| | N/A |
| I. | Participation in a voluntary pollution reduction program. |
| | N/A |
| J. | Early compliance. |
| | N/A |

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FAIRWAY LEASING, L.L.C.
RN105186456**

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§
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§
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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0531-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Fairway Leasing, L.L.C. ("Fairway") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Fairway appear before the Commission and together stipulate that:

1. Fairway owns and operates a leasing company for commercial buildings located at 18534 Forty Six Parkway East in Bulverde, Comal County, Texas (the "Site").
2. This Site is regulated under the Edwards Aquifer rules and is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Fairway agree that the Commission has jurisdiction to enter this Agreed Order, and that Fairway is subject to the Commission's jurisdiction.
4. Fairway received notice of the violations alleged in Section II ("Allegations") on or about April 3, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Fairway of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Dollars (\$1,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Fairway has paid Eight Hundred Dollars (\$800) of the administrative penalty and Two Hundred Dollars (\$200) is deferred contingent upon Fairway's timely and satisfactory compliance with all the terms of

this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Fairway fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Fairway to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Fairway have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Fairway has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, Fairway is alleged to have failed to re-apply and receive approval for a Contributing Zone Plan ("CZP") prior to initiating construction as a new property owner, in violation of 30 TEX. ADMIN. CODE § 213.23(h), as documented during an investigation conducted on March 20, 2007.

III. DENIALS

Fairway generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Fairway pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Fairway's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Fairway Leasing, L.L.C., Docket No. 2007-0531-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Fairway shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete CZP including the associated application fee for the Site to:

Edwards Aquifer Protection Program
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

- b. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing; and
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:


Edwards Aquifer Section, Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon Fairway. Fairway is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Fairway fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Fairway's failure to comply is not a violation of this Agreed Order. Fairway shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Fairway shall notify the Executive Director within seven days after Fairway becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Fairway shall be made in writing to the Executive Director. Extensions are not effective until Fairway receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Fairway in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Fairway, or three days after the date on which the Commission mails notice of the Order to Fairway, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director


8/29/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

6.17.07
Date

KAY PRINCE

Name (Printed or typed)
Authorized Representative of
Fairway Leasing, L.L.C.

Treasurer

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

